IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1723 of 2001
(Old No. 1264 of 2000)

1. Vijay Kumar Mehrotra
   S/o Bankey Lal
   R/o Mohalla Bambagher
   Ram Nagar, District Nainital.
2. Tasleem
   S/o Abdul Rashid
   R/o Mohalla Bhawani Ganj
   Ram Nagar, Tehsil Ram Nagar
   District Nainital ……Appellants

Versus

The State of U.P. …….Respondent.

Shri Siddharth Sah, learned counsel for the appellants.

Hon'ble Prafulla C. Pant, J

Heard Shri Siddharth Sah, learned counsel for the appellants and perused the record.

2. This appeal, is preferred under Section 449 of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr. P.C.), challenging the order dated 10.04.2000, passed in Misc. Case No. 05 of 1998, State Vs. Vijai Kumar Mehrotra, under Section 446 Cr.P.C., whereby recovery warrant has been issued against the appellants (sureties).

3. Admittedly, the appellants stood sureties for the accused Santosh Mehrotra in Sessions Trial No. 32 A of 1997, pertaining to offence punishable under Section 307 of Indian penal Code, 1860 (for brevity herein after referred as I.P.C.). It is also not disputed that the appellants could not produce the accused, when he was

required to attend the court. In the circumstances, it cannot be said that the impugned order suffers from any illegality. However, since on behalf of the appellants it is submitted that accused Santosh Mehrotra had died during the trial, this appeal is dismissed with the observation that if either of the sureties (appellants) establishes before the trail court the fact relating to the death of the accused, the said court may consider remission of the amount to be recovered, under Sub-section (3) of Section 446 of Cr.P.C. The interim order passed by this Court on 02.06.2000, stands hereby vacated. (All pending applications in this case also stand disposed of).

Dt.10.10.2006 **(Prafulla C. Pant, J.)**

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